

REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

The rejection is based on the assertion that Kahn teaches "at least 50% of the fat is solid beta phase crystalline fat at 0°F." Kahn states:

"The invention provides a whipped food product comprised of an oil-in-water emulsion... wherein at least about 50% of said fat is a solid beta phase-tending crystalline fat, ... wherein the product is substantially non-crystalline and spoonable at about 0°F." (column 32, lines 13-29)

0°F is the temperature at which Kahn's product is substantially non-crystalline and spoonable. But the temperature at which at least 50% of the fat is solid beta phase crystalline fat is actually room temperature, clearly stated in column 3 lines 3-11:

"Any beta phase-tending crystalline fat which is a solid at room temperature may be employed as the fat component of the premix, and preferably those saturated or partially hydrogenated beta phase-tending crystalline fats having a melting point of about 85°F to about 120°F, and preferably 90°F to 105°F." (emphasis supplied)

Kahn further indicates that:

"At least about 50% of the fat should be comprised of beta phase-tending crystalline fat of the type described above, while the balance of the fat may be comprised of any of a number of polyunsaturated fats." (column 5, lines 31-39)

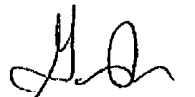
Thus '773 teaches a product in which at least 50% of the fat is solid beta phase crystalline fat at room temperature. Moreover, the Office points to no place where Kahn et al. address the problem addressed by the present invention, namely how to prepare an ice cream containing a fat phase of which a high proportion (at least 50%) is liquid at -50C. It is therefore submitted that claims 1 and 2 of the present invention are not obvious from the teaching of Kahn.

Applicants respectfully request that Kahn et al. US Patent No. 4,552,773 be listed on form PTO-892.

With respect to the double patenting rejection, applicants agree to file a terminal disclaimer upon indication that the claims are allowable.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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